

APPLICANT:
John Colflesh

REQUEST: A special exception pursuant to
Section 267-53D(3) of the Harford County Code
to operate a motor vehicle repair shop in an
Agricultural District

HEARING DATE: November 10, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5447

ZONING HEARING EXAMINER'S DECISION

APPLICANT: John Colflesh

LOCATION: 2946 Sandy Hook Road, Lands of E. L. Dinning, Bel Air
Tax Map: 26 / Grid: 3E / Parcel: 79 / Lot: Parcel "A"
Third Election District (3rd)

ZONING: AG / Agricultural District

REQUEST: A special exception pursuant to Section 267-53D(3) of the Harford County
Code to operate a motor vehicle repair shop an Agricultural District.

TESTIMONY AND EVIDENCE OF RECORD:

John Colflesh testified that he is a single father, raising two young children. His property is a 12.66 acre parcel on which he lives and operates a motor vehicle repair shop, trading as J.C. Services, Inc., a Maryland corporation.

Mr. Colflesh is requesting a special exception to operate a motor vehicle repair shop, which Mr. Colflesh has been operating, without a permit, since he purchased the property in the year 2000.

Mr. Colflesh works out of a shop building located on the southerly side of his property, approximately 190 feet off Sandy Hook Road. In addition to his home, there is an in-ground swimming pool located to the rear of his property. Site improvements are shown on Applicant's Attachment 4. Mr. Colflesh has not added any buildings to the property. He and his family also have two horses on the property for their personal enjoyment.

Mr. Colflesh performs general motor vehicle repairs, primarily involving dump trucks. He does body and fender work, both commercial and consumer, with much of his business involving the installation and repair of dump truck body tarp systems. Prior to beginning his operation at the subject property, Mr. Colflesh worked in a similar business as an employee for about 20 years.

Mr. Colflesh explained that 99% of his work is done inside the building, which has doors large enough to accommodate dump trucks. He has no employees and has no plans to hire any employees. Mr. Colflesh feels it is important that he continue to maintain his business on his

Case No. 5447 – John Colflesh

property, rather than some other location, as he is a single parent and wishes to be home with his children as much as possible.

Mr. Colflesh agreed to all of the recommended conditions of the Harford County Department of Planning and Zoning. He agreed to an additional condition, if approval were granted, which would prohibit him from hiring employees. The Applicant, on the site plan marked as Attachment 4, indicated the parking area which would be associated with the repair facility. The parking area is located to the west side of the shop, which would allow the parking area to be screened from Sandy Hook Road by the existing building.

Mr. Colflesh has spoken to all of his neighbors and none have expressed any opposition to his request. Mr. Colflesh explained that the property located to the south and west is owned by Harford County Maryland, and is maintained as park lands. The property to his north along Sandy Hook Road is owned by Rebecca Muth, who is not opposed to the request. Across Sandy Hook Road is property owned by Keith Cummins, who is not opposed to the request.

While the shop building is visible from Sandy Hook Road, Mr. Colflesh has made extensive plantings of Leyland Cypress, which have reached a height of approximately 5 feet. Mr. Colflesh has some exterior lighting around his shop building. He has heard no objection to the lighting. The Applicant will have no signage on his property advertising the motor vehicle repair business.

Next testified Rebecca Muth, who resides at 2950 Sandy Hook Road. Ms. Muth identified herself as a next door neighbor of Mr. Colflesh. Ms. Muth's property contains approximately 4-1/2 acres. Ms. Muth has no objection to the proposed business. Vehicles on the Colflesh property are seldom visible from her property and are usually parked inside the shop building.

Next testified Keith Cummins, who resides at 3001 Sandy Hook Road. Mr. Cummins lives across Sandy Hook Road from Mr. Colflesh. He has no objections to the proposed use, and does not believe the proposed use would harm the neighborhood.

Next for the Applicant testified Rowan Glidden, a registered landscape architect with Campbell Nolan and Associates. Mr. Glidden was offered and accepted as an expert land planner. Mr. Glidden testified he is familiar with the subject property and with the general and specific provisions of the Harford County Development Regulations, including the provisions of Section 267-9(I). He has reviewed and agrees with the findings and conclusions of the Harford County Department of Planning and Zoning Staff Report.

Case No. 5447 – John Colflesh

Mr. Glidden believes that the impact of the motor vehicle repair facility will be no greater at the proposed location than if located elsewhere within the zone. The proposed use, in fact, has less visibility and impact than many agricultural uses which could be made of the parcel. The proposed use is located on a large parcel, has adequate buffering, and is located a sufficient distance from the public road. Furthermore, sight distance along Sandy Hook Road is sufficient so as not to impose a traffic hazard. The proposed use is not located within 400 feet of any public park.

Mr. Glidden is, further, of the opinion that the proposed use would have no adverse impact upon the neighbors or adjoining properties.

No testimony or evidence was offered in opposition to the proposed request.

APPLICABLE LAW:

Section 267-51 of the Harford County Code states as follows:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

This special exception request is governed by Section 267-53D(3) of the Harford County Code, discussed below.

This special exception request is also governed by Section 267-39(C)(7) of the Harford County Code, discussed below.

Furthermore, Section 267-9I of the Harford County Code, Limitations, Guides, and Standards, is applicable to this as all other similar requests.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant is requesting special exception approval to operate a motor vehicle repair shop on a 12.66 acre parcel, which also contains the Applicant’s residence, located on Sandy Hook Road. The parcel itself is agriculturally zoned, is well screened from adjoining properties and is, in fact, adjoined on two sides by Harford County park lands. The property owners to the north and across Sandy Hook Road both expressed their lack of opposition to the requested special exception and attended the hearing to express and emphasize their lack of opposition.

Case No. 5447 – John Colflesh

The proposed use itself will, for the most part, consist of the repair of body work on dump trucks, including installation and repair of tarp systems. The use will employ only the Applicant. There will be no signs advertising the proposed use, and the activity will be conducted either wholly within the existing shop building or on the side of the shop building screened from Sandy Hook Road. Accordingly, with the existing screening along Sandy Hook Road, the proposed use should be, if not invisible, certainly low-key and visually non-intrusive.

In order to qualify for the granting of a special exception, the Applicant must comply with the specific requirements of Section 267-53D(3), Motor Vehicle Repair Shops.

- (3) *Motor vehicle repair shops. These uses may be granted in the AG and B1 Districts, provided that:*

The property is zoned AG/Agricultural.

- (a) *A buffer yard at least 10 feet wide shall be provided along any adjacent road right-of-way or adjacent residential lot.*

The Applicant is fully able to comply with this requirement. The site plan, in the file as Attachment 4, shows clearly that the shop and proposed parking area will be located well off Sandy Hook Road, greatly exceeding the 10 foot buffer requirement. Furthermore, existing vegetation, including that planted by the Applicant, will help delineate the buffer and screen the proposed use.

- (b) *The requirements of Section 267-39C(7) of this chapter for service stations and repair shops in the B2 and B3 Districts shall be met.*

See comments following.

- (c) *Unless Board approval is granted, accessory buildings and outdoor storage of vehicles, tires, and equipment shall be prohibited.*

As a condition of approval, outdoor storage of vehicles, tires and equipment shall be prohibited. Vehicles awaiting repair shall be stored within the building or the designated parking area.

- (d) *The operator of the shop shall maintain a log of all vehicles repaired. For each vehicle, the log shall include the vehicle identification number and a description of the vehicle and identify the dates the vehicle arrived and was removed. The log shall be available for inspection during normal business hours. If no log exists, it shall be assumed for the purposes of § 267-39C(7)(f) that each vehicle has been stored on the property for 90 days.*

This shall be a condition of this recommended decision.

Case No. 5447 – John Colflesh

- (e) *The rental or storage of trailers, boats, and trucks shall be prohibited.*

The rental or storage of trailers, boats or trucks shall be prohibited.

- (f) *Proposed outdoor storage areas and refuse storage areas shall be fenced or screened from adjacent properties and shown on the site plan submitted for Board approval.*

There shall be no outdoor storage areas and refuse storage areas allowed with the exception of the parking area on which vehicles undergoing or awaiting repair may be parked. This area is adequately screened from adjacent properties.

- (g) *Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, adjacent properties, and the neighborhood. When a wall is required, a planting strip at least 5 feet wide shall be provided also and shall include trees and shrubs that are at least 2 feet high when planted and that may be expected to form a year-round dense screen within 3 years. The location and species of trees and shrubs used for screening shall be chosen with consideration for the size of the trees and shrubs at maturity. Fences, walls, screening, and planting strips shall be located so that they do not constitute sight obstructions for the drivers of vehicles entering or exiting the parcel or any adjacent lot or parcel.*

The existing trees and trees planted by the Applicant are found to be appropriate for the proposed use. It is further found that there are no features of the subject property, including existing screening, which would pose a sight obstruction for vehicles entering or leaving the property.

- (h) *The fumes, odors and noise from the vehicle-related work shall be minimized.*

There is no evidence that the proposed use would generate such characteristics. The Applicant's proposal, which would include using the existing shop for most of the repair work, would minimize any such impact on the neighborhood.

- (i) *A minimum parcel area of 1 acre shall be required.*

The property is 12.66 acres in size.

Case No. 5447 – John Colflesh

- (j) *In the AG District, the use shall be operated by the resident of the property.*

The Applicant meets this requirement.

Harford County Code Section 267-39C(7) provides as follows:

- (7) *Motor vehicle filling or service stations and repair shops, in the B2 and B3 Districts, provided that:*
 - (a) *Pumps shall be at least twenty-five (25) feet from all road rights-of-way.*

The Applicant proposes no pumps. The on-site storage of gasoline and diesel fuel shall be prohibited.

- (b) *All portions of the lot used for storage or service of motor vehicles shall be paved with a hard surface.*

The area to the rear of the building to be used for storage shall be paved.

- (c) *No obstructions which limit visibility at intersections or driveways shall be permitted.*

The visibility at the entrance is good in both directions.

- (d) *Lighting shall be designed and controlled so that any light shall be shaded, shielded or directed so that the light intensity or brightness shall not adversely affect the operation of vehicles or reflect into residential buildings.*

The Applicant is fully able to comply with this requirement, which will be made part of the recommended decision.

- (e) *No motor vehicle filling or service station driveway shall be located less than four hundred (400) feet from the property line of any public or private institutional use, including schools, houses of worship, hospitals, parks or playgrounds.*

While this requirement is not applicable to this request, the Applicant is nevertheless able to maintain a 400 foot distance from the surrounding Harford County park land.

Case No. 5447 – John Colflesh

- (f) *Vehicles, except those vehicles used in the operation of the business, may not be stored on the property for more than ninety (90) days.*

The Applicant will be required to maintain a log and comply with this requirement as a condition of this recommended decision.

The Applicant is, accordingly, fully able to comply with all specific requirements of a motor vehicle repair shop special exception, pursuant to Section 267-53D(3).

Furthermore, however, the Applicant must comply with more generalized standards of Section 267-9I – Limitations, Guides and Standards, as follows:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part I and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part I, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) *The number of persons living or working in the immediate area.*

The Applicant’s proposed use is located on a large parcel, well back from the road. There should be no adverse impacts to persons living or working in the area.

- (2) *Traffic conditions, including facilities for pedestrians, such as sidewalk and parking facilities, the access of vehicles to roads; peak periods of traffic, and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.*

There is no evidence that the proposed use will have any impact on Sandy Hook Road, which is a County-owned and maintained road, with relatively light traffic.

- (3) *The orderly growth of the neighborhood and community and the fiscal impact on the county.*

The proposed use is a special exception and there is no evidence that the proposed use would have any impact on the growth of the neighborhood or community, or on the fiscal impact of the County.

Case No. 5447 – John Colflesh

- (4) *The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.*

There is no evidence, or even suggestion, that these characteristics would be generated by the proposed use or have any impact on the neighborhood. Certainly, the proposed use would have no greater impact than would a relatively intense farming operation, which would also be allowed in the area.

- (5) *Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.*

The Harford County Sheriff's Office and Maryland State Police will provide police protection. The Bel Air and Dublin/Darlington Volunteer Fire Departments will provide fire protection and emergency services. Water and sewer facilities will be provided by on-site well and septic systems. A private company of the Applicant's choice will handle trash collection.

- (6) *The degree to which the development is consistent with generally accepted engineering and planning principles and practices.*

The proposed use is consistent with generally accepted planning principles.

- (7) *The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.*

There have been no structures identified which would be impacted by the proposal.

- (8) *The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.*

The proposal is consistent with the 2004 Harford County Master Plan.

- (9) *The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.*

There are no environmental features identified which would be impacted by the proposed use. The surrounding Harford County park area should not be impacted in any fashion by the proposed use.

- (10) *The preservation of cultural and historic landmarks.*

No such landmarks have been identified.

Case No. 5447 – John Colflesh

Accordingly, the Applicant is fully able to meet the more generalized standards of Section 267-9I.

Lastly, the proposal must be reviewed to determine if it is one which, despite the Applicant's ability to comply with all specific and general standards, would nevertheless have an impact greater than such a use would have at other locations within the zone. Guidance for this review process is well provided by the holdings of Schultz v. Pritts, 291 Md., (1981), Mossburg v. Montgomery County, 352 Md. 619 (1999), and a host of other cases. It is not for the Board of Appeals to determine if the proposed use is compatible with other uses. Special exceptions have been determined by the legislative body to be compatible, provided the specific conditions of the particular special exception are met, as they are in this case, and after a determination of whether the proposed use “. . . will have adverse effects in any particular location which would be greater than the adverse effects normally associated with such a use . . .”. See Schultz, supra.

It is found that the motor vehicle repair use as proposed by the Applicant, and as conditioned herein, will not have adverse effects any greater at the proposed location than are normally associated with such a use.

CONCLUSION:

Accordingly, it is recommended that the proposed special exception be granted, subject to the following conditions:

1. The Applicant shall submit a detailed site plan to be reviewed and approved through the Development Advisory Committee. The plan shall clearly show the parking and storage area.
2. The Applicant shall maintain a log of every vehicle, trailer or equipment on site for repair. Vehicles, except those used in the operation of the business, may not be stored on the property for more than 90 days.
3. Any security lighting shall be directed to the ground and away from any adjacent properties or the road. Lighting shall be shaded, shield or directed so that it does not reflect into the surrounding residences.
4. The hours of operation shall be limited to between 7:00 a.m. and 8:00 p.m., Monday through Friday, and 7:00 a.m. to 5:00 p.m. on Saturdays. There shall be no Sunday operation.
5. The Applicant shall maintain the existing screening along Sandy Hook Road.
6. There shall be no signs of a commercial nature located on the property.

Case No. 5447 – John Colflesh

7. The Applicant's business shall be limited to the one building (the building to the south side of the property that faces Sandy Hook Road). The second building shall be limited to the personal use of the Applicant and the storage of farm equipment.
8. The Applicant shall use the parking lot, as delineated on Attachment 4, for the parking of vehicles either under repair or awaiting repair. There shall be no outside storage of equipment, tires or materials. All such equipment or materials shall be located within the shop building.
9. The on-site storage of gasoline and diesel fuel is prohibited.
10. The approved use shall be operated by the Applicant only; he shall no employees or independent contractors working on the subject property.
11. The Applicant shall do nothing to impair visibility at the intersection of his driveway and Sandy Hook Road.
12. The parking lot shall be paved with a hard surface.
13. The rental or storage of trailers, boats or trucks shall be prohibited.
14. This approval shall be for the Applicant only and shall terminate upon the sale of the property or business.

Date: December 15, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner